

State Of Alaska

Emergency Equipment Rental Agreement

Rental of Equipment Conditions

The State of Alaska, Department of Natural Resources, or any agency of the State of Alaska in an emergency response, will be referred to as "State" in this document.

Scope of Work - The purpose of the Emergency Equipment Rental Agreement (EERA) (Form 10-2193) and these Rental of Equipment Conditions (Form 10-2197a) is to secure the services of contractor-provided equipment and vehicles for use in the State's response to emergency situations. Normal use of equipment and vehicles is under rough and demanding conditions. Contractors are encouraged to maintain physical damage and theft insurance for losses other than loss due to the State's negligence.

1. Issuance of Orders - Upon acceptance of an order for service, a binding contract between the Contractor and the State is created incorporating the terms of the EERA and these Rental of Equipment Conditions. The Start of the rental period will be agreed upon at the time of the order for service. Each service call will be documented on an Emergency Equipment Use Invoice, OF-286. The Contractor agrees that such forms may be signed by his operator as his duly authorized representative for the purpose of certification as to the number of hours or other units of pay earned. The Contractor or operator(s) must sign the Emergency Equipment Use Invoice document at the time of release from work.

2. Reporting for Service - The Contractor is responsible for delivering equipment to the State in good and safe operating condition and will be subject to pre-use inspection. If equipment is not ready for operation when it arrives for work, the State may refuse to accept it. If equipment is rejected, the State will not pay transportation costs. The Contractor warrants that all equipment meets state and federal safety regulations and standards. The operator(s), if furnished by the Contractor, shall report to a State official at the incident base camp or other designated reporting station at outset of the rental period so equipment can be logged in, inspected and time records started. The operator(s) shall keep a copy of the Emergency Equipment Rental Agreement with the equipment.

3. Transportation of Equipment - Equipment will be transported at State expense from point of hire to the site of work and, at the option of the Contractor, returned to the location from which it was picked up or a nearer destination, except as otherwise provided in condition 2 above. If the State uses Contractor's hauling equipment to transport equipment to the work site and such hauling equipment is not already covered by an EERA, it is agreed that the haul rate will not exceed the State's Equipment Rental Rate Guidelines.

4. Operating Supplies - Operating supplies include fuel, oil, lube, filters, and lube/oil changes. Unless otherwise specified in the EERA, the Contractor will furnish lubricants, all fuel and all other operating supplies normally needed to operate equipment.

5. Time Keeping - Time will be recorded by a State agent responsible for ordering and/or directing use of each piece of equipment on an Emergency Equipment Shift Ticket, Optional Form 297. Time will be recorded on the Equipment Use Invoice as follows:

- A. **Hourly** rate from Column 13 on the EERA - nearest quarter-hour.
- B. **Monthly, Weekly, or Daily** rate from Column 13 on the EERA - by calendar day except for first and last day, which will be recorded to nearest quarter hour.
- C. **Per Mile Special** rate from Column 14 on the EERA - nearest mile.

6. Payments - Rates of payments - Rates for equipment hired with operator(s) includes all operator(s) expenses except as noted in condition 15. Payment for equipment will be at rates specified on the Emergency Equipment Rental Agreement, Form 10-2193. While the vendor may agree to an Equipment Use Invoice that is incorrect by signing it, the State retains the right to correct mathematical

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errors to bring the invoice into contractual compliance.

A. **Hourly Rate:** Column 13 (EERA) shall apply when equipment is under hire and on shift as ordered by the State, including relocation of equipment under its own power, except when equipment is held in ground support, a staging area, Incident Command Post, area office or designated parking area, or is being transported by means other than under its own power. Under such exceptions however, the equipment is subject to the Minimum Daily Guarantee (6.D.). For time the equipment and/or operator is inoperable or unavailable during a scheduled shift, the equipment will not be considered "on shift" for pay purposes.

B. **Daily Rate:** Column 13 (EERA) payment will be made on basis of calendar days (0001-2400). For fractional days at beginning and ending of time under hire, payment will be based on 25 percent of the daily rate for each six hours or fraction thereof that equipment is under hire. If either the equipment or operator is inoperable or unavailable to work when needed in any calendar day (down time), the following payment for that day applies: less than two hours down time, 100% of the daily rate is paid; two to less than six hours of down time, 75 per cent of the daily rate is paid; six to less than twelve hours of down time, 50 per cent of the daily rate is paid; twelve to less than eighteen hours of down time, 25 per cent of the daily rate is paid; eighteen or more hours of down time, 0 per cent of the daily rate is paid.

C. **Special Rates:** Column 14 (EERA) shall apply when an additional rate is charged in addition to the Hourly, Daily or Weekly rate (column 13) for the same piece of equipment. An example is a daily rate and mileage rate.

D. **Minimum Daily Guarantee** - Column 15 (EERA) applies to equipment hired under an Hourly Rate, or Hourly Rate and Special Rate, or Special Rate only (example – loaded mile), as follows:

(1) On a given day, the State will pay either the amount due as a result of Hourly and/or Special Rate, or the Minimum Daily Guarantee, subject to (3) below, whichever is greater.

(2) Transport equipment is eligible for the Minimum Daily Guarantee, on a day-to-day basis, when such equipment is required by the State. Transport equipment kept on-scene for Contractor convenience only, is not eligible for the Minimum Daily Guarantee.

(3) Applying the Minimum Daily Guarantee (Column 15):

(a) The Minimum Daily Guarantee applies **ONLY** to equipment hired under the Hourly Rate, Hourly and Special Rate, or Special Rate only.

(b) Subject to (3)(c) below on the first and last days, the full Minimum Daily Guarantee will apply if the travel to the work site begins before noon on the first day or travel from the work site terminates after noon on the last day. Otherwise, one-half the Minimum Daily Guarantee will apply. If the first and last day of hire is the same day, the full Minimum Daily Guarantee will apply if travel to the work begins before noon and travel from the work site terminates after noon. Otherwise, one-half the Minimum Daily Guarantee applies.

(c) If either the equipment or operator is inoperable or unavailable, the following guarantee provisions apply: less than two hours down time, full Minimum Daily Guarantee applies; two to less than six hours down time, 50 per cent of the Minimum Daily Guarantee applies; six or more hours down time, the Minimum Daily guarantee does not apply.

E. In those cases where the equipment or operator is inoperable or unavailable because of the State's fault or negligence, the State will negotiate a reasonable settlement with the contractor. In no case shall the State pay more than the fair market value of the equipment.

7. Repairs - Repairs to equipment shall be made and paid for by the Contractor. The State may, at its option, elect to make such repairs when necessary to keep the equipment operating. The cost of such repairs will be deducted from payment to the Contractor on the Equipment Use Invoice.

8. Loss, Damage or Destruction: The State will only reimburse the Contractor for the costs of loss, physical damage or destruction arising directly from the negligence of the State's employees. The State's liability is limited to the lesser of the actual repair costs or prevailing market value. The State is not responsible for indirect damages such as loss of use or lost profits. No compensation will be paid for normal wear and tear.

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9. Permits - The Contractor is responsible for obtaining at his own expense, carrying a copy of, and showing proof at the time of hire, all necessary licenses and permits required by state and federal law and regulations.
10. Accessories Required for Off-Road Vehicles - The Contractor shall provide one five-lb., functional ABC-type fire extinguisher, one tool box with suitable tools for equipment repairs, overhead cab (ROPS), choker chain or winch with cable, and other accessories required for safe operation.
11. Accessories for Highway Vehicles - Legal Highway vehicles must have the following: Seat belts for all occupants; five-lb. fire extinguisher, matching spare tire mounted securely, three emergency reflectors, jack that can lift the vehicle's legal load, and placard signs on all four sides of vehicles where required.
12. Termination for Convenience - A State officer may terminate the order for service at any time. When the order for service is so terminated, the State shall be liable only for payments in accordance with payment provisions of these Rental of Equipment Conditions for services rendered prior to the effective date and time of termination.
13. Custody - If the Contractor provides the operator(s), equipment should remain in the operator's custody during the entire period of use. If equipment is furnished without an operator, and is accepted by the State, it comes into and remains in custody of the State until it is returned to the Contractor. During such time the State, as bailee, will exercise ordinary prudence and diligence in the use and care of the equipment.
14. Hold Harmless - The Contractor shall indemnify, save harmless and defend the State, its officers, agents and employees from all liability, including costs and expenses, for all actions or claims resulting from injuries or damages sustained by any person or property arising directly or indirectly as a result of any error, omission or negligent act of the contractor, subcontractor or anyone directly or indirectly employed by them in the performance of this agreement.

All actions or claims, including costs and expenses resulting from injuries or damages sustained by any person or property arising directly or indirectly from the Contractor's performance of this agreement, which are caused by the joint negligence of the State and the Contractor, will be apportioned on a comparative fault basis. Any such joint negligence on the part of the State must be a direct result of active involvement by the State.

Additional Conditions For Rentals With Operator

15. Meals and Bedding - If a State subsisted incident camp is established, meals and bedding for Contractor's operator(s) may be furnished equivalent to that provided to other state and/or federal employees assigned to the incident without additional charge at the discretion of the State.
16. Performance and Direction of Work - The operator has status of an employee of the Contractor and is responsible at all times for the care and safe, efficient operation of equipment and may refuse to work in a situation exceeding operator(s) ability or that of the equipment. The operator must possess all necessary, valid driver's licenses and any other certifications. The operator receives work assignments from, and performs work under, general direction of State personnel. The State may request removal and replacement of any operator(s) who, in the State's judgment, is incompetent, careless or otherwise objectionable.
17. Equipment Servicing - The term servicing shall include servicing the equipment with fuel, lubricants and other operating supplies. It is the responsibility of the operator to determine that the fuel used is the proper fuel for the equipment being serviced. The operator is responsible for all equipment servicing, lubricants, filters, and parts to maintain the equipment in serviceable condition.

18. Tools, Spares and Accessories - The operator is responsible at all times for tools, spares, and accessories belonging to himself or the Contractor, and shall secure them in the equipment, if possible. Items, which cannot be so secured, may be placed in a State designated storage area. In such cases the State, as bailee, will be responsible for exercise of ordinary care and diligence, and will be responsible for any loss or damage to such items resulting from the State's fault or negligence.
19. Worker's Compensation - The Contractor shall carry and maintain, for all employees engaged in work under this agreement, coverage as required by AS 23.30.045.
20. Liability Insurance - The Contractor must carry adequate liability insurance to protect the Contractor and the State from loss arising from the performance for an order for service. The minimum amount of liability insurance is \$300,000.00 combined single limit per occurrence, however for passenger carrying buses, the minimum amount of liability insurance is \$1,000,000.00 combined single limit per occurrence. Proof of insurance must be available within each vehicle and presented upon demand when requested by a representative or agent of the State.

The Contractor will be responsible for all damages to property and to persons, including third parties, that occur as a result of Contractor or Contractor's agent or employee fault or negligence. The term "third parties" is construed to include employees of the State.

I certify that I have read and agree to the "Rental of Equipment Conditions" contained on this form. This form supersedes all previous versions which may be referred to in Block 16 of Form 10-2193 Emergency Equipment Rental Agreement.

Contractor's/Authorized Agent's Signature

Date

Printed Name and Title

Company Name